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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NORBERTO MARTINEZ,

Petitioner,

-against-

ORDER

13-CV-2957 (NGG)

UNITED STATES OF AMERICA,

Respondent.

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NICHOLAS G. GARAUFIS, United States District Judge.

On August 25, 2009, Petitioner Norberto Martinez filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255 challenging his conviction and sentence for various drug offenses entered on June 12, 2006. See Pet., Martinez v. United States, No. 09-CV-3692 (NGG) (E.D.N.Y. Aug. 25, 2009), Dkt. 1. On December 22, 2010, the court denied Martinez's motion. Dec. 22, 2010, Mem. & Order, id., Dkt. 10. On June 21, 2011, the Second Circuit denied Martinez's motion for a certificate of appealability and dismissed his appeal. Mandate, id., Dkt. 12.

On May 15, 2013, Martinez, appearing pro se, filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2255, again challenging the conviction and sentence entered on June 12, 2006. (Pet. (Dkt. 1).) Because this Petition challenges the same conviction and sentence, it is a "second or successive" petition and "must be certified as provided in section 2244 by a panel of the appropriate court of appeals" to seek relief based on either "newly discovered evidence" or "a new rule of constitutional law." 28 U.S.C. § 2255(h); see id.

§ 2244(b). Only the Second Circuit can make this determination. Gonzalez v. Crosby, 545 U.S. 524, 530 (2005).

Accordingly, in the interest of justice, the Clerk of Court is respectfully ordered to TRANSFER the instant Petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Liriano v. United States, 95 F.3d 119 (2d Cir. 1996) (per curiam). This order closes this case. If the Second Circuit authorizes Petitioner to proceed in this matter, he shall move to reopen under this case number.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
July 8th 2013

NICHOLAS G. GARAUFIS
United States District Judge